

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>JEROME W. VITTETOE PORK, LTD. Washington County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 201 <u>5</u> -AFO- <u>01</u></b>
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TO: Heidi Vittetoe, Registered Agent  
Jerome W. Vittetoe Pork, Ltd.  
2504 Quince Avenue  
Washington, Iowa 52353

Jerome Vittetoe, Owner  
Jerome W. Vittetoe Pork, Ltd.  
2504 Quince Avenue  
Washington, Iowa 52353

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jerome W. Vittetoe Pork, Ltd. (JWV Pork) for the purpose of resolving issues regarding uncertified applicators working for JWV Pork. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Jeff Prier, Field Office 6  
Iowa Department of Natural Resources  
1023 West Madison  
Washington, Iowa 52353  
Phone: 319/653-2135

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Height, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits

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issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. JWV Pork is a licensed commercial manure service. On October 30, 2014, Jeff Prier, DNR Field Office 6 Environmental Specialist Senior, conducted a manure applicator inspection at an application field located in the NW ¼, Section 4, Washington Township, Washington County. JWV Pork was transporting and applying manure to the application field. Mr. Prier checked the certification of the applicators; Tim Wells and Jim Wells were both properly certified. Mr. Prier asked Tim Wells who was driving the semi haulers. Mr. Wells stated the drivers were Bill Blum, Alan Jones, Matt Spray and Dillion Redlinger. Mr. Wells also stated the four drivers were not properly certified. The haulers were transporting manure approximately seven miles with no certified representative properly supervising them. Mr. Wells stated in the past the company had certified many people to haul manure but many ended up not hauling manure so the company stopped certifying the people. Additionally, Mr. Prier noted that there was not proper signage on the semi haulers.

2. On October 31, 2014, Jerome Vittetoe brought five employees to the Iowa State University Extension to obtain manure certifications.

3. On November 3, 2014, DNR issued a Notice of Violation letter to JWV Pork for the four uncertified applicators. The letter indicated the matter was being referred for further enforcement.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.315(2) and 567 IAC 65.19(1) state that a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Iowa Code section 459.102(12)"b" defines a "commercial manure service representative" as an employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service. During Mr. Prier's investigation, it was determined that four employees of JWV Pork were not properly certified as a commercial manure service representative. The above-mentioned facts indicate violations of this provision.

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**V. ORDER**

THEREFORE, the DNR orders and JWV Pork agrees to do the following:

1. JWV Pork employees shall not handle, transport, or apply manure unless they are properly certified; and
2. JWV Pork shall pay an administrative penalty of \$5,000.00, within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC Chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” JWV Pork saved time and money by not ensuring all of its employees were properly certified as commercial manure service representatives. JWV Pork delayed the expenses of the training and certification fees. An estimated economic benefit of \$400.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The manure applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. JWV Pork’s failure to ensure that all of its

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employees were properly certified threatens the integrity of the water quality program. Therefore, \$1,600.00 is assessed for this factor.


Culpability –JWV Pork has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The manure applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. A JWV Pork employee stated that the company had previously certified its haulers but had stopped this practice. Therefore, \$3,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of JWV Pork. For that reason JWV Pork waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 7<sup>th</sup> day of  
January, 2015.

  
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JEROME W. VITTETOE PORK, LTD.

Dated this 30 day of  
December, 2014.

Kelli Book, Jeff Prier - Field Office 6, EPA, VIII.D.4